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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Thomas G. Woolston Art Unit: 2164
Serial No.: 09/166,779 Examiner: Kyle, C.
Filed : October 6, 1998
Title : METHODS AND APPARATUS FOR FACILITATING ELECTRONIC
COMMERCE TRANSACTIONS IN AN OFFER/COUNTER-OFFER
EXCHANGE

BOX AF

Commissioner for Patents
Washington, D.C. 20231

Brief on Appeal

Sir:

Applicant herewith files this brief on appeal under 37 CFR 192. The headings required by rule 37 CFR 192(c) follow. A Notice of Appeal was mailed on November 19, 2001, and received by the U.S. Patent Office on January 16, 2002.

✓ (1) Real Party in Interest

The application is assigned of record to MercExchange LLC, who is the real party in interest.

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I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Commissioner for Patents, Washington, D.C. 20231.

July 16, 2002

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Nancy Grant

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(2) Related Appeals and Interferences

A. U.S. Patent Application Serial No. 08/427,820, filed April 26, 1995, is on appeal before the Board of Patent Appeals & Interferences. Briefing has been completed.

B. U.S. Patent Application Serial No. 09/253,014, filed February 19, 1999, is on appeal before the Board of Patent Appeals and Interferences. Appellants' Brief on Appeal was filed April 8, 2002.

C. U.S. Patent Application Serial No. 09/203,286, filed December 2, 1998, is pending in Art Unit 2164 before Vincent Millin awaiting decision on a request to declare an interference with U.S. Patent No. 5,794,207.

D. U.S. Patent Application Serial No. 09/253,015, filed February 19, 1999, is pending in Art Unit 2162 before John L. Young. A Notice of Appeal was filed on July 12, 2002.

(3) Status of Claims

Claims 11, 12, 14-20 and 81-129 are pending in the application. All of the pending claims were finally rejected in an office action mailed June 19, 2001 ("the office action").

(4) Status of Amendments

An amendment is filed concurrently herewith canceling claims 130-140 in order to reduce the number of issues on appeal.

(5) Summary of Invention

The claimed invention relates to computer-implemented methods and systems for facilitating an electronic commerce ("e-commerce") transaction over a computer network such as the Internet between a seller and at least one buyer [P.8, L.10-P.9, L.20; P.13, L.18-P.14, L.2]. Sellers who desire to sell items (e.g., used or collectable goods) on the Internet use their respective computer systems to provide relevant information to a host computer system [P.15, L.24-P.16, L.22; P.29, L.13-15]. The information provided by a seller may include a description of the item to be sold, and a "sell at" price - that is, a sales price at which the seller is committing to be legally bound (referred to as "a binding offer to sell [at] a binding sale price" in the language of the claims) [P.29, L.13-15; P.17, L.22-P.18, L.21; Fig. 3; P.24, L.20-22; P.5, L.14-21].

The host computer system uses the seller-provided information to output to a plurality of buyers a binding offer to sell the item [P.3, L.14-26; P.4, L.7-14; P.24, L.6-12]. These potential buyers can use their respective computer systems

to communicate with the host computer system to accept the binding offer [P.24, L.13-16]. More specifically, a buyer tenders acceptance by providing payment information sufficient to authorize payment of the offer price, e.g., to a third party who can then convey the purchase funds to the seller [P.33, L.7-9].

The claimed methods provide several advantages including finality of transaction and market efficiency. That is, once a binding offer is output, the seller is under a legal, contractual obligation to sell the item at the binding sales price [P.30, L.15-23; P.33, L.2-27]. A potential buyer is thereby assured of the item's bona fide availability and legal title [P.5, L.22-26; P.33, L.5-6]. Consequently, if a buyer tenders acceptance, he will have legal recourse against the seller if the seller refuses to perform (e.g., a vested legal right to damages or other remedy for the seller's breach of contract) [P.30, L.15-23].

Alternatively, instead of tendering acceptance of the seller's binding offer to sell, a potential buyer can make a binding counteroffer (a "buy at" counteroffer) to buy the item at a binding counteroffer price. [P.24, L.16-19] The seller then either can accept or reject the binding counteroffer [P.24, L.19-22].

Once a buyer has tendered acceptance of a binding sales offer and payment has been perfected, the buyer has options as to how to proceed. For example, the buyer either can take possession of the purchased item (e.g., instruct that the item be shipped to the buyer) or can post the item for re-sale without taking possession of the item [P.5, L.14-17; P.23, L.4-7]. This feature helps to create a market-maker environment in which buyers and sellers can speculate in items, posting "buy at" and "sell at" offers as desired and thereby letting market efficiencies determine the price and value for items being bought and sold. [P.2, L.15-19] This ability to post a purchased item for re-sale represents a dramatic step in increasing the efficiency of e-commerce markets.

The claims on appeal recite computer-implemented methods for facilitating transactions between a seller and at least one buyer in which a seller provides information indicating a binding offer to sell an item at a binding sale price, the binding offer is output to a plurality of buyers, and in which a buyer can tender acceptance of the binding offer by providing payment information.

(6) Issues

The issues for review are:

- A. Did the Patent Office err by rejecting Group I and III claims as being anticipated by Ginter (USP 6,185,683) under 35 USC 102(e) when Ginter fails to disclose several, if not all, of the express claim limitations in the Group I and III claims?
- B. Did the Patent Office err in rejecting the Group I, II and III claims under 35 USC 103(a) by basing the rejections on a mistaken understanding of the technology, a mischaracterization of the cited references, reliance on unsupported and conclusory assertions of obviousness, and improper hindsight reconstruction?

(7) Grouping of Claims

For the purposes of this appeal only, the following Groups of claims rise or fall together:

Group I: Claims 11-20, 81-93, 101-115 and 117, of which claim 11 is representative.

Group II: Claims 94-100, 116 and 118, of which claim 118 is representative.

Group III: Claims 119-129, of which 119 is representative.

(8) Argument

A. The Section 102(e) Rejection of Group I and III Claims is Defective Because the Reference Relied Upon, Ginter, Fails to Disclose Several, If Not All, of the Express Claim Limitations

At pages 2-4 of the office action, the Patent Office rejected Group I and Group III claims as being anticipated by Ginter (USP 6,185,683). This rejection is defective for several reasons.

i. The Group I Claims

The Group I claims, of which claim 11 is representative, are directed to a method for using a computer to facilitate a transaction between a seller and at least one buyer. The method of claim 11 includes receiving at the computer a binding offer to sell an item which includes a binding sale price, outputting the binding offer to sell to a plurality of potential buyers, and receiving acceptance of the binding offer to sell the item from at least one buyer, the buyer tendering acceptance by providing payment information.

Ginter relates to trusted and secure techniques for document delivery and execution. As such, Ginter is focused on exchanging documents between parties, not on outputting binding offers to sell and receiving acceptance through tender of payment information, as required by claim 11.

The portions of Ginter relied on by the Patent Office make this distinction clear. At column 54, line 15 through column 55, line 59 (which was cited in the office action as allegedly disclosing outputting a binding offer to sell to a plurality of buyers), Ginter expressly states that its system comes in to play **after** a contract already has been formed. See, e.g., col. 54, lines 19-21 ("The seller and buyer and their respective real estate agents write a legal contract which the seller and buyer then sign"; reference numbers omitted). Consequently, it is not only a mischaracterization of Ginter but also non-sensical to assert that the noted portion of Ginter discloses or contemplates outputting a binder offer to sell (a prerequisite **before** a contract is formed) as recited in claim 11.

Moreover, the example in Ginter relied on by the Patent Office clearly is directed to a two party transaction. There simply is no teaching of outputting a binding offer to anyone, much less to a plurality of potential buyers as recited in claim 11.

The section 102(e) rejection based on Ginter further is defective because there also is no teaching of receiving acceptance from a buyer in the form of tender by providing payment information as recited in claim 11. To the contrary, the portion of Ginter relied on by the Patent Office (col. 54,

lines 39-45) merely discloses that intermediaries may be used to help ensure that **conditions** of a contract already formed have been satisfied. But as noted above, the contract with which Ginter's system is concerned was previously formed and signed by the buyer and seller (see Ginter at col. 54, lines 19-21). Accordingly, it is a mischaracterization of Ginter, and indeed non-sensical as a matter of substantive law, to assert that this portion of Ginter somehow discloses accepting a binding offer to sell by tendering payment information, as recited in claim 11, which of course is a prerequisite to contract formation as claimed. In other words, the end result of claim 11 is the formation of a contract. In stark contrast, Ginter's process does not even begin to operate until after a contract has been formed.

ii. The Group III Claims

Claim 119, which is representative of the Group III claims, is directed to a method for using a computer system to facilitate a transaction between a seller and at least one buyer. Similar to the Group I claims, the method of claim 119 includes presenting to a plurality of potential buyers a binding offer to sell an item, the presented binding offer to sell including at least a binding offer price. However, instead of receiving acceptance by tender of payment information as recited

in the Group I claims, claim 119 recites receiving from at least one buyer a binding counteroffer for the item. Moreover, the binding counteroffer includes at least a binding counteroffer price for the item and payment information sufficient to authorize payment of the counteroffer price. Ginter further fails to disclose this feature of claim 119.

In support of the section 102(e) rejection, the Patent Office relies on Ginter at col. 51, lines 13-17, which discloses that...

"[A] trusted electronic go-between might then contact the car dealership, present the buyer's offer and receive ... the car dealer's counter offer concerning price and availability. **Trusted electronic go-between could negotiate or mediate between the two parties, and supervise the creation of a contract.**" [reference numbers omitted; emphasis added]

However, Ginter makes no mention either that the counter offer is binding or that it includes payment information sufficient to authorize payment of the counteroffer price, both as required by claim 119. To the contrary, the above-highlighted portion of Ginter suggests that the counter offer is in fact not binding, but rather is subject to further negotiation and/or mediation. Moreover, there is no disclose of including payment information with the counter offer as required by claim 119. Accordingly,

the section 102(e) rejection of the Group III claims is defective for these additional reasons.

B. The Patent Office Erred in Rejecting the Group I, II and III Claims under 35 USC 103(a) Because the Rejections are Based on a Mistaken Understanding of the Technology, a Mischaracterization of the Cited References, Reliance on Unsupported and Conclusory Assertions of Obviousness, and Improper Hindsight Reconstruction

i. **The Group I Claims**

As noted above, the primary citation to Ginter fails to disclose or suggest a method for using a computer to facilitate a transaction between a seller and at least one buyer such as recited in claim 11, which includes receiving at the computer a binding offer to sell an item which includes a binding sale price, outputting the binding offer to sell to a plurality of potential buyers, and receiving acceptance of the binding offer to sell the item from at least one buyer, the buyer tendering acceptance by providing payment information. The remaining citations fail to cure the deficiencies of Ginter.

Nahan (USP 5,664,111) relates to a multimedia presentation system in which an art dealer ("the buying dealer") can show his clients works (e.g., pieces of art work) from the inventory of another art dealer ("the listing dealer"). As disclosed in Nahan in Fig. 24 and at column 13, line 47 - column 14, line 49m if one of the buying dealer's client wishes to purchase a work

from the listing dealer's inventory, then the buying dealer can use Nahan's system to "place a buy order on behalf of [the] client." Col. 13m lines 47-48. Nahan's system then generates an order confirmation and assigns a transaction number. The listing dealer is then requested to "**confirm that the work is still available.**" Col. 13, lines 48-51 (emphasis added). Nahan's system further "**requests that the buying dealer wire transfer funds to pay for the purchased work.**" Col. 13, lines 62-64 (emphasis added). As further disclosed in Nahan at col. 14, lines 6-22 (emphasis added; reference numbers omitted)...

If [Nahan's] system does not receive notification that the **buying dealer has wire transferred the necessary funds** within a predetermined period of time, the system issues an electronic order acceptance tracking notice to the buying dealer. If after another predetermined period of time, the system still has not received notification that the buying dealer has wire transferred the funds, the system **cancels the order** [and] issues an order cancellation notice to the buying dealer and the listing dealer.

If the **listing dealer rejects the order** of the buying dealer or does not respond to a confirmation of availability request, the system **cancels the transaction**. When the **listing dealer formally rejects the order**, an order rejection confirmation is electronically conveyed to the listing dealer. At the same time, the system sends an electronic notice to the buying dealing informing him that the **requested work is not available**.

Accordingly, as clearly indicated by the above-cited passages, Nahan's system does not disclose or suggest several features of claim 11 including outputting a binding offer to sell an item, including a binding offer price, and receiving acceptance of the binding offer to sell the item from at least one buyer, wherein the buyer tenders acceptance by providing payment information. To the contrary, the above passages from Nahan demonstrate that listings in Nahan's system are not binding offers to sell but rather mere invitations to deal. Moreover, a "buy order" in Nahan is merely a non-binding offer to purchase a work and not an acceptance of a binding offer to sell as recited in claim 11. Last but not least, Nahan fails to disclose or suggest a buyer's accepting a binding offer for sale by tendering payment information as recited in claim 11. To the contrary, Nahan explicitly discloses that payment information is not input and processed by the Nahan System; rather, payment is process by individuals wire transferring funds between third party banks. Consequently, Nahan's system has no reason to collect payment information from the buying dealer, and for that reason, specifically teaches away from receiving payment information from the buyer, as recited in claim 11.

The remaining citation to "Save the Earth" fails to cure the deficiencies of Ginter and Nahan. Save the Earth relates to

an Internet-based auction in which "Internet users will be able to view full color images of the posters to be auctioned online, check current bids and their own bids online." However, Save the Earth fails to disclose or suggest outputting to a plurality of potential buyers a binding offer to sell an item, including a binding offer price, and receiving acceptance of the binding offer to sell the item from at least one buyer, wherein the buyer tenders acceptance by providing payment information, as recited by claim 11. To the contrary, Save the Earth says nothing about binding offers or tendering acceptance by providing payment information.

Although not cited against the Group I claims, appellant notes that neither of the other references relied on in the office action - Lawrence (USP 5,915,209) and "Sold!" - discloses or suggests outputting to a plurality of potential buyers a binding offer to sell an item, including a binding offer price, and receiving acceptance of the binding offer to sell the item from at least one buyer, wherein the buyer tenders acceptance by providing payment information, as recited by claim 11.

The above-noted differences from the art of record result in the method of claim 11 providing several advantages over prior art systems. For example, as discussed in the specification at least at page 33, lines 2-20, the method of

claim 11 facilitates an electronic commerce exchange in which transactions between buyers and sellers are consummated with legal finality of transaction and in an environment that fosters confidence in the integrity and trustworthiness of the exchange. Accordingly, the method of claim 11 represents a dramatic improvement over systems such as disclosed in Nahan, Save the Earth, and the like, which provide no such finality of transaction, and consequently, little if any trust or confidence by the participants to the transaction.

The comments at pages 14-16 of the office action suggest that the Patent Office does not understand the meaning and significance of a trustworthy exchange that provides finality of transaction. In particular, with regard to Nahan, the Patent Office asserts that the above-highlighted limitations of Nahan (e.g., listing dealer having to confirm availability of requested work and having the ability to reject the buy order, ability to cancel the transaction, buyer having option not to advance purchase funds, etc.) "are inherent to any sales transaction, binding or not; it is impossible to force the sale of an item which is unavailable." Office action at 15. Clearly, the Patent Office is mistaken. As any person skilled in the art of commerce knows, once a sales contract has been formed (e.g., by tendering acceptance of a binding offer to sell such as

recited in claim 11), a breach by the seller (non-performance or refusal to convey) gives rise to certain legal remedies, among them specific performance (requiring the seller to convey the item to the buyer) or damages for non-performance.

The availability of these remedies is, in fact, one of the key distinctions between Nahan and the method of claim 11. In Nahan, the listing dealer is free, without fear of legal penalty, to refuse to sell the item or to cancel the transaction after the buy order has been made. Similarly, the potential buyer in Nahan is free, without fear of legal penalty, not to convey the purchase funds after a buy order has been placed. This is so because Nahan is a mere invitation-to-deal system. In contrast, the method of claim 11 results in a binding sales contract, the non-performance of which (either by buyer or seller) results in breach with all of the attendant legal remedies potentially being available.

Similar confusion on the part of the Patent Office is demonstrated in the first paragraph of page 16 of the office action. Here, the Patent Office mistakenly asserts that if it is the buying dealer placing the buy order in Nahan, then somehow the limitations of claim 11 are met. But such is not the case. The identity of the party making the buy order in Nahan is irrelevant. Regardless of who is making the buy order

in Nahan, the listing dealer has the opportunity to refuse to sell the requested work without incurring legal liability (which by definition means that the listing dealer's listing of the work is not a binding offer but rather a mere invitation to deal) and the potential buyer has the opportunity not to convey purchase funds without incurring legal liability (which by definition means that the buy order in Nahan is not a tender of acceptance).

Accordingly, the Group I claims are allowable because the art of record, when correctly understood and characterized, fails to teach or suggest the combination of features recited therein.

ii. The Group II Claims

Claim 118, which is representative of the Group II claims, is directed to a method for using a computer system to facilitate a transaction between a seller and at least one buyer. The claimed method includes presenting to a plurality of potential buyers a binding offer to sell an item, the presented binding offer to sell including at least a binding offer price, receiving from at least one buyer a binding acceptance of the binding offer, the received binding acceptance including payment information sufficient to authorize payment of the offer price

to a third-party, and allowing the buyer to post the item for re-sale or auction without taking delivery of the item.

The Group II claims are allowable at least for the same reasons discussed above as the Group I claims. In addition, the Group II claims are allowable as a result of the recitation of allowing the buyer to post the item for re-sale or auction without taking delivery of the item. In rejecting claim 118, the Patent Office has failed to identify or cite a single reference in support of its position. See office action at pages 10-11. Rather, the Patent Office makes wholly unsupported and conclusory assertions of obviousness and, to make matters worse, engages in classic hindsight reconstruction.

More specifically, the Patent Office asserts that...

[I]t would have been obvious ... to have allowed the buyer to post the item for re-sale or auction without taking delivery of the item [because (i)] this would have allowed buyers to **speculate**, by purchasing an item in the hope for a rapid and profitable resale at a higher price[; (ii)] if a buyer intended such a re-sale, it would have been counterintuitive **to have made him pay for shipping** to his residence only to have shipped the item again on re-sale,[; and (iii)] the third party need not have stood any loss, for warehousing expense could be built into fees.
[Office action at page 11; emphasis added]

This assertion by the Patent Office is somewhat shocking in view of the relatively large number of legal defects on which it is based: first, not a single reference is relied on in support;

second, it reconstructs the claimed invention using applicant's own claims as a blueprint; and third, the motivation for making the combination to reject claim 118 appears to have been taken directly from appellant's own disclosure. See, e.g., the specification at page 5, lines 22-26 (stating that "this allows a participant to **speculate** with collectable goods ... and not incur the **shipping costs** with physically moving the goods ..."; emphasis added).

With regard to the first legal defect (failing to cite even a single reference in support of the combination rejection), by failing to identify specific teachings in the cited art for the features of claim 118, the office action implicitly acknowledges that the cited art - regardless of how it hypothetically may be combined - fails to disclose or suggest the subject matter of the Group II claims. Under such circumstances, the Patent Office has only two permissible options: (1) concede that the claims are patentable over the cited art and allow the claims, or (2) attempt to locate and cite additional references or other **evidentiary support** to fill the holes in the Patent Office's deficient rejections. But in this case, the Patent Office chose a third, albeit impermissible, course of action - namely, making wholly unsupported assertions and conclusory statements that the

claim features not taught or suggested in the art of record are obvious or inherent simply because the Patent Office says so.

The Federal Circuit has recently reaffirmed that obviousness rejections based on assertions lacking evidentiary support in the record cannot stand. In In re Lee, 277 F.3d 1338 (Fed. Cir. 2002), the Federal Circuit vacated a Patent Office Board affirmance of an obviousness rejection because, rather than relying on objective evidence, the Patent Office based its obviousness rejection on conclusory statements having no evidentiary support in the record. Id. at 1342-43. In doing so, the Federal Circuit made it abundantly clear that "subjective belief and unknown authority" and "[assertions of] common knowledge and common sense" are **not** "a substitute for evidence." Id. at 1343-44.

With regard to the second and third legal defects (reconstructing claim 118 using appellant's own claims as a blueprint and appellant's own specification as the motivation for making the combination), it is difficult to imagine a more blatant case of hindsight reconstruction. It is well settled that the Patent Office cannot, as it has done here, use appellant's own disclosure and claims against him in rejecting the claims for obviousness. Rather, the Patent Office must point to **objective teachings in the record** that suggest the

desirability of the combination or modification. Clearly, the Patent Office has failed to do in this instance. Consequently, the rejection of claim 18 is defective and must be reversed as a matter of law.

iii. The Group III claims

As discussed above, the Group III claims, of which claim 119 is representative, are directed to a method that, similar to the Group I claims, includes presenting to a plurality of potential buyers a binding offer to sell an item, the presented binding offer to sell including at least a binding offer price. However, instead of receiving acceptance by tender of payment information as recited in the Group I claims, claim 119 recites receiving from at least one buyer a binding counteroffer for the item. Moreover, the binding counteroffer includes at least a binding counteroffer price for the item and payment information sufficient to authorize payment of the counteroffer price.

For the reasons discussed above, neither Ginter nor any of the other cited reference discloses or suggests the combination of features recited in claim 119. Accordingly, the Group III claims are allowable over the art of record.

Summary

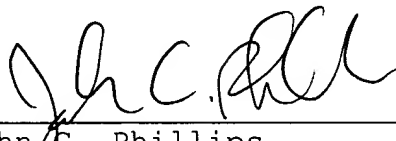
For the reasons discussed above, all of the claims are in condition for allowance. A formal notice of allowance is respectfully solicited.

Please apply any charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: _____

7/16/02



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APPENDIX A

CLAIMS ON APPEAL:

11. A method for using a computer to facilitate a transaction between a seller and at least one buyer, comprising:

receiving at the computer a binding offer to sell an item which includes a binding sale price;

outputting the binding offer to sell to a plurality of potential buyers; and

receiving acceptance of said binding offer to sell said item from at least one buyer, said buyer tendering acceptance by providing payment information.

12. (Amended) The method of claim 11 further comprising:

rejecting another acceptance of the binding offer by a second buyer while acceptance from the first buyer is pending.

14. (Amended) The method of claim 11 wherein the received payment information comprises information

identifying an account maintained by or on behalf of an entity operating the computer.

15. (Amended) The method of claim 11 wherein the received payment information identifies a credit card account.

16. (Amended) The method of claim 11 further comprising:

notifying the seller of the acceptance of the binding offer to sell the item.

17. (Amended) The method of claim 16 further comprising:

withholding payment from the seller until delivery to the buyer is assured.

18. (Amended) The method of claim 16 further comprising:

processing the payment information to collect funds for the item;

deducting a predetermined commission for sale of the item; and

transferring a remainder of the funds to the seller as payment for the item.

19. (Amended) The method of claim 16 further comprising:

processing the payment information to collect funds in payment for the item;

depositing the funds into an escrow account; and

withholding payment of the funds in the escrow account to the seller until delivery to the buyer is assured.

20. (Amended) The method of claim 11 further comprising:

requiring performance by the seller of terms and conditions associated with the binding offer to sell before providing payment to the seller.

81. A method for using a computer system to facilitate a transaction between a seller and at least one buyer, the method performed by the computer system comprising:

presenting to a plurality of potential buyers a binding offer to sell an item, the presented binding offer to sell including at least a binding offer price; and

receiving from at least one buyer a binding acceptance of the binding offer, the received binding acceptance including payment information sufficient to authorize payment of the offer price to a third-party.

82. The method of claim 81 wherein the payment information comprises one or more of the following: credit card information, Electronic Funds Transfer information, debit account information, and e-money information.

83. The method of claim 81 wherein the payment information sufficient to enable payment to the third-party comprises at least an account identifier, the possession of which provides authorization to debit the identified account by a predetermined amount.

84. The method of claim 81 further comprising using the received payment information to enable a transaction fee to be paid to the third-party.

85. The method of claim 84 wherein the transaction fee is independent of the binding offer price.

86. The method of claim 84 wherein the transaction fee is related to the binding offer price.

87. The method of claim 86 wherein the transaction fee is a percentage of the binding offer price.

88. The method of claim 81 wherein the third-party is an entity by whom, or on whose behalf, the computer system is operated.

89. The method of claim 81 wherein the third-party is independent of the seller.

90. The method of claim 81 further comprising receiving, by the third party, payment from the buyer using the received payment information.

91. The method of claim 90 further comprising providing payment from the third-party to the seller.

92. The method of claim 81 further comprising charging the seller a transaction fee.

93. The method of claim 81 further comprising keeping the buyer's received payment information confidential from the seller.

94. The method of claim 81 further comprising selectively allowing the buyer to take delivery of the item or to post the item for re-sale.

95. The method of claim 94 wherein, if the buyer elects to post the item for re-sale, the third-party maintains possession of the item pending the re-sale.

96. The method of claim 94 wherein posting the item for re-sale comprises offering the item for auction.

97. The method of claim 94 wherein posting the item for re-sale comprises making another binding offer to sell the item.

98. The method of claim 81 further comprising allowing the buyer to post the item for re-sale or auction without taking delivery of the item.

99. The method of claim 98 further comprising receiving from the buyer a new offer price or a reserve price.

100. The method of claim 98 further comprising posting the item for re-sale or auction.

101. The method of claim 81 further comprising, prior to presenting the binding offer to the plurality of potential buyers, receiving the binding offer from the seller.

102. The method of claim 81 further comprising, prior to presenting the, binding offer to the plurality of potential buyers, receiving information from the seller descriptive of the item.

103. The method of claim 81 further comprising, prior to presenting the binding offer to the plurality of

potential buyers, receiving from the seller an identifier associated with the item for sale.

104. The method of claim 103 further comprising using the received identifier as an index into a database to retrieve a data record descriptive of the item.

105. The method of claim 104 wherein the data record was previously created based on a prior transaction.

106. The method of claim 103 wherein the database was developed in a first instance by an entity independent of the third-party.

107. The method of claim 103 wherein the database is maintained by the third-party based on transactions facilitated by the computer system.

108. A method for using a computer system to facilitate a transaction between a seller and at least one buyer, the method performed by the computer system comprising:

presenting to a plurality of potential buyers a binding offer to sell an item, the presented binding offer to sell including at least a binding offer price;

receiving from at least one buyer a binding acceptance of the binding offer, the received binding acceptance including payment information sufficient to authorize payment of the offer price to a third-party; and

receiving payment for the item from the buyer by the third-party and making payment for the item from the third-party to the seller while maintaining the buyer's payment information in confidence from the seller.

109. The method of claim 108 wherein the third-party comprises a trusted intermediary.

110. The method of claim 108 wherein the third-party is independent of the buyer and of the seller.

111. The method of claim 108 further comprising charging by the third-party a transaction fee for handling the sale of the item.

112. The method of claim 111 wherein the transaction fee is charged to the seller.

113. The method of claim 111 wherein the transaction fee is independent of the offer price.

114. The method of claim 111 wherein the transaction fee is related to the offer price.

115. The method of claim 114 wherein the transaction fee is a percentage of the sales price.

116. The method of claim 108 further comprising allowing the buyer to post the item for re-sale or auction without taking delivery of the item.

117. The method of claim 108 further comprising, prior to presenting the binding offer to the plurality of potential buyers, receiving the binding offer from the seller.

118. A method for using a computer system to facilitate a transaction between a seller and at least one

buyer, the method performed by the computer system comprising:

presenting to a plurality of potential buyers a binding offer to sell an item, the presented binding offer to sell including at least a binding offer price;

receiving from at least one buyer a binding acceptance of the binding offer, the received binding acceptance including payment information sufficient to authorize payment of the offer price to a third-party; and

allowing the buyer to post the item for re-sale or auction without taking delivery of the item.

119. A method for using a computer system to facilitate a transaction between a seller and at least one buyer, the method performed by the computer system comprising:

presenting to a plurality of potential buyers a binding offer to sell an item, the presented binding offer to sell including at least a binding offer price; and

receiving from at least one buyer a binding counteroffer for the item, the binding counteroffer including at least a binding counteroffer price for the item, the received binding counteroffer including payment

information sufficient to authorize payment of the counteroffer price.

120. The method of claim 119 wherein the binding counteroffer is subject to an expiration date.

121. The method of claim 120 wherein the buyer specifies the expiration date.

122. The method of claim 119 wherein the buyer's counteroffer is received by a third-party which notifies the seller of the counteroffer's existence.

123. The method of claim 119 wherein the seller may elect to accept or reject the binding counteroffer.

124. The method of claim 119 wherein the computer is operated by or on behalf of a third-party that is independent of the seller and the buyer.

125. The method of claim 124 wherein the third-party comprises a trusted intermediary.

126. The method of claim 124 wherein the third-party maintains the buyer's payment information in confidence from the seller.

127. The method of claim 119, if the seller accepts the buyer's counteroffer, further comprising making payment of the counteroffer price from the buyer to the seller.

128. The method of claim 127 wherein payment of the counteroffer price is made directly from the buyer to the seller.

129. The method of claim 127 wherein payment of the counteroffer price is made indirectly from the buyer to the seller through a third-party.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Thomas G. Woolston
 Serial No. : 09/166,779
 Filed : October 6, 1998
 Title : METHODS AND APPARATUS FOR FACILITATING ELECTRONIC
 COMMERCE TRANSACTIONS IN AN OFFER/COUNTER-OFFER
 EXCHANGE

Art Unit : 2164 3624
 Examiner : Kyle, C.

Commissioner for Patents
 Washington, D.C. 20231

TRANSMITTAL LETTER AND PETITION FOR AUTOMATIC EXTENSION

Correspondence relating to this application is enclosed. The required fees are computed below. Please apply any charges not covered, or any credits, to Deposit Account No. 06-1050.

Total Claims	58	-	80	=	0	\$0
Independent	5	-	22	=	0	\$0

§1.17(f) Filing Fee for Appeal Brief \$160

Applicant hereby petitions under 37 C.F.R. §1.136 for a 4 month extension of time. \$720

TOTAL FEE DUE \$880

A check for \$880 is attached.

Respectfully submitted,

Date:

7/16/02

John C. Phillips
 Reg. No. 35,322

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CERTIFICATE OF MAILING BY FIRST CLASS MAIL

I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Commissioner for Patents, Washington, D.C. 20231.

July 16, 2002

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Nancy Grant

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